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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,910	04/14/2004	Zoya Hajianpour	1380	6101
28173	7590	10/26/2005	EXAMINER	
RONALD V. DAVIDGE SUITE 514 3300 UNIVERSITY DRIVE CORAL SPRINGS, FL 33065			FLANAGAN, BEVERLY MEINDL	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,910

Applicant(s)

HAJIANPOUR, ZOYA

Examiner

Beverly M. Flanagan

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-8, 10-17 and 19 is/are rejected.
- 7) ☒ Claim(s) 2, 9 and 18 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

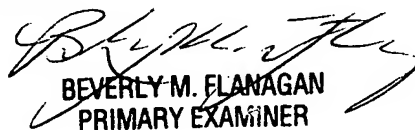
Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


BEVERLY M. FLANAGAN
PRIMARY EXAMINER

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 4/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Information Disclosure Statement

The information disclosure statement filed April 14, 2004 has been made of record and the references cited therein have been considered by the examiner.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 10-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 10-12 recite the limitation "the lateral structure" or "the lateral blades". There is insufficient antecedent basis for this limitation in claim 8, from which claims 10-12 depend, and which recites "second lateral structure".

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3-8, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by McMillin et al. (U.S. Patent No. 6,416,467).

In regard to claims 1, 3-8, 11 and 12, McMillin et al. teach a vaginal speculum 20 having a superior blade 40 and an inferior blade 41 for expanding the vaginal cavity in a vertical direction and a latitudinal assembly 90 for expanding the vaginal cavity in the horizontal direction (see Figures 1-4 and col. 3, lines 5-15). The superior blade 40 and the inferior blade 41 are mounted on a Y shaped handle 30 which has a viewing aperture 8 through which internal structures are visualized (see Figure 4). The latitudinal assembly 90 includes two corresponding sidewall members 92 where each sidewall member 92 has a proximate sidewall arm 96 and a distal sidewall paddle or blade 98 (see Figure 3). The distal sidewall paddle 98 is rounded and rests in the interior of the space enclosed by the concave shaped space partially enclosed by the longitudinal assembly (see col. 5, lines 26-30). The sidewall arms 96 have upper 97 and lower 99 portions, and the upper portions 99 are joined to the sidewall paddle 98 and extend outward from the paddle 98 to form a U-shaped mounting bracket 100 that constitutes a downwardly open slot for removably attaching the sidewall paddles 98 to the Y-shaped handle 30 (see Figures 2 and 3). McMillin et al. depict the individual sidewall arms 96 and paddles 98 formed as one piece, but contemplate that separately formed parts can also be used (see col. 5, lines 33-36). An adjuster device 94 clamps and holds the sidewall arms 96 on the Y shaped handle 30 (see Figures 2 and 3).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 10, 13-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over McMillin et al. (U.S. Patent No. 6,416,467).

In regard to claim 10, McMillin et al. are silent as to having two adjuster devices 94 for clamping the sidewall arms 96 onto the Y shaped handle 30. However, McMillin et al. do contemplate that separately formed parts can also be used (see col. 5, lines 33-36). Furthermore, it is well settled that duplicating the components of a prior art device is a design consideration within the skill of the art. In re Harza, 274 F.2d 669, 124 USPQ 378 (CCPA 1960). Accordingly, it would have been obvious for one of ordinary skill in the art at the time the invention was made to provide the speculum with two adjuster devices 94 for clamping the sidewall arms 96 onto the Y shaped handle 30. **In regard to claims 13-17 and 19**, see col. 6, lines 22-40 of McMillin et al. Furthermore, the device disclosed by McMillin et al. is inherently capable of performing the method steps set forth in claims 13-17 and 19, as the device contains all of the structural limitations recited in the instant invention that perform the claimed functions.

Allowable Subject Matter

Claims 2, 9 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should note the following prior art references disclosing speculums with lateral wall retraction devices: Weiss, U.S. Patent No. 6,428,474; Resnick, U.S. Patent No. 6,280,379; Weiss, U.S. Patent No. 6,394,950; Propp, U.S. Patent No. 6,364,832; Nwawka, U.S. Patent No. 6,036,638; Patton et al., U.S. Patent No. 5,377,667 and Strong, U.S. Patent No. 6,048,308.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (571) 272-4766. The examiner can normally be reached on Mondays, Tuesdays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Beverly M. Flanagan
Primary Examiner
Art Unit 3739
